No. 94-84

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

RAMONA CONVENT OF THE HOLY NAMES,
Petitioner,
vs.
CITY OF ALHAMBRA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION THREE

PETITIONER'S REPLY BRIEF

GIDEON KANNER
Counsel of Record

M. REED HUNTER

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

700 South Flower Street, Suite 2200
Los Angeles, California 90017
(213) 896-8000

ROGER M. SULLIVAN

SULLIVAN, WORKMAN & DEE

Attorneys for Petitioner
RAMONA CONVENT OF THE HOLY NAMES

Lawyers Brief Service • Appellate Brief Printers • (213) 613-1013 • (714) 720-1510

No. 94-84

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

RAMONA CONVENT OF THE HOLY NAMES,
Petitioner,
vs.
CITY OF ALHAMBRA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION THREE

PETITIONER'S REPLY BRIEF

GIDEON KANNER
Counsel of Record
M. REED HUNTER
CROSBY, HEAFEY, ROACH & MAY
Professional Corporation
700 South Flower Street, Suite 2200
Los Angeles, California 90017
(213) 896-8000

ROGER M. SULLIVAN
SULLIVAN, WORKMAN & DEE
Attorneys for Petitioner
RAMONA CONVENT OF THE HOLY NAMES

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES. iii

I. THIS CASE PRESENTS AN OPPORTUNITY TO RECONCILE THE ZONING POWER WITH THE RIGHT OF FREE EXERCISE OF RELIGION GUARANTEED IN THE FIRST AMENDMENT AND THE RELIGIOUS FREEDOM RESTORATION ACT 1

A. The Rulings Below Deprived Ramona Convent Of Its Right To Free Exercise Of Religion 1

B. The City's Attempts To Focus This Court's Attention Away From The Religious Freedom Restoration Act Are Misdirected. 2

II. THE CALIFORNIA COURT RULING THAT RAMONA CONVENT RETAINS AN ECONOMICALLY BENEFICIAL OR PRODUCTIVE USE OF ITS PROPERTY IS UNSUPPORTED BY LAW OR EVIDENCE 4

A. The City Ignores Its Repeated Concession Below That Its Zone Is, In Its Own Words, A Public Facilities Zone, And It Has Thus By Definition Conscripted Private Property For An Avowedly Public Purpose Without Compensation. 4

Page

B. The City's Claim — That There Is A Categorical Rule Of Law That If A Zoning Imposition Allows Continuance Of An Existing Use On Property, It Is Immune From Constitutional Scrutiny — Does Not Express The Law Of This Court 4

III. THERE ARE NO PROCEDURAL REASONS WHY A GRANT OF CERTIORARI WOULD BE INAPPROPRIATE 6

A. This Case Is Ripe For Review. 6

B. The Issues Raised In The Petition Are Properly Before This Court 7

C. The City's Efforts To Transport California Just Compensation Law Into The American Mainstream Are Unavailing 9

CONCLUSION 10

APPENDIX I

NOTICE OF MOTION FOR ADJUDICATION OF ISSUES, MEMORANDUM OF POINTS AND AUTHORITIES, AND DECLARATION OF P. MICHAEL PAULES IN SUPPORT THEREOF, FILED JUNE 10, 1991. . . . . A1

TABLE OF AUTHORITIES

Page

Cases

Attorney General v. Desilets,
638 N.E.2d 233 (Mass. 1994) 3

Barbaccia v. County of Santa Clara,
451 F. Supp. 260 (N.D. Cal. 1978) 5

Celestial Church of Christ v. City of Chicago,
1994 WL 282304 (N.D. Ill. 1994) 2

Elysium Institute Inc. v. County of Los Angeles,
232 Cal.App.3d 408 (1991) 9

First English Evangelical Lutheran Church v. County of Los Angeles,
482 U.S. 304 (1987) 9

Fordham Univ. v. Brown,
__ F. Supp. __ (D.D.C. 1994)
(1994 WL 369460). 3

Fred F. French Invest. Co. v. City of New York,
352 N.Y.S.2d 762 (1973), *aff'd*
385 N.Y.S.2d 5 (1976). 5

Germantown Seventh Day Adventist Church v. City of Philadelphia,
1994 WL 470191 (E.D. Pa. 1994) 2

Hunt v. Hunt,
__ A.2d __ (Vt. 1994) (1994 WL 419775) 3

Page

In Re Faulkner,
165 B.R. 664 (W.D. Mo. 1994) 3

Lucas v. South Carolina Coastal Council,
505 U.S. __, 112 S.Ct. 2886 (1992) 5

M. J. Brock & Sons, Inc. v. City of Davis,
401 F. Supp. 354 (N.D. Cal. 1975) 5

MacDonald, Sommer & Frates v. Yolo County,
477 U.S. 340 (1986) 6

Messina v. Mazzeo,
854 F. Supp. 116 (E.D.N.Y. 1994) 3

Murdock v. Pennsylvania,
319 U.S. 105 (1943) 1, 2

Penn Central Trans. Co. v. City of New York,
438 U.S. 104 (1978) 5

Reily v. Reno,
__ F. Supp. __ (D. Ariz. 1994)
(1994 WL 442826) 3

Rohn v. City of Visalia,
214 Cal.App.3d 1463 (1989) 9

Speiser v. Randall,
357 U.S. 513 (1958) 7

Surfside Colony, Ltd. v. California Coastal Comm'n,
226 Cal.App.3d 1260 (1991) 9

Page

Tan v. California Fed. Sav. & Loan Ass'n,
140 Cal.App.3d 800 (1983) 8

Twain Harte Associates, Ltd. v. County of Tuolumne,
217 Cal.App.3d 71 (1990) 9

Vernon v. City of Los Angeles,
27 F.3d 1385 (9th Cir. 1994). 3

Western Presbyterian Church v. Board of Zoning Adjustment,
__ F. Supp. __ (D.D.C. 1994)
(1994 WL 487861). 2

Whittier v. Aramian,
264 Cal.App.2d 683 (1968) 3

Statutes

42 U.S.C. §§ 2000bb *et seq.* 2
42 U.S.C. § 2000bb-1(b)(2). 3
42 U.S.C. § 2000bb-3(a) 3

Constitutions

United States Constitution
First Amendment 1, 5, 10
Fourteenth Amendment 8

PETITIONER'S REPLY BRIEF

I.

THIS CASE PRESENTS AN OPPORTUNITY TO RECONCILE THE ZONING POWER WITH THE RIGHT OF FREE EXERCISE OF RELIGION GUARANTEED IN THE FIRST AMENDMENT AND THE RELIGIOUS FREEDOM RESTORATION ACT

A. The Rulings Below Deprived Ramona Convent Of Its Right To Free Exercise Of Religion

The arguments advanced in the City of Alhambra's Opposition only demonstrate the weakness of the City's position and the appropriateness of certiorari.

The City seeks to draw a defining line between laws imposing financial burdens and laws directly restricting religious belief and practice. ("The burden Ramona claims is a financial burden, not a burden on religious belief or acts." Opp. 18) Neither reason nor law makes this delineation. Where, as here, a religious institution may be "crushed and closed out by the sheer weight of a regulatory burden," the free exercise clause is impinged. *Murdock v. Pennsylvania*, 319 U.S. 105, 1995 (1943).[1]

---

[1] In *Murdock*, a Pennsylvania community imposed a license fee (a de facto tax) on purveyors of religious literature. This Court noted that the power to tax is the equivalent of the "power to control or suppress." *Id.* at 112. The same is true of the power to regulate. The cases cited at Opp. 19-20 do not present facts anything like

(continued)

The proposition the City offers as blackletter law, that imposing financial burden on religious institutions can never implicate the free exercise clause or the Religious Freedom Restoration Act (42 U.S.C. §§ 2000bb *et seq.*), cannot be a rule for all seasons; these cases are fact-specific.

Similarly, the City's suggestion that free exercise claims do not have existence separate from just compensation claims and do not merit discrete consideration (see, *e.g.*, Opp. i Question 3, 17-21) is simply wrong. Free exercise claims are not subsumed into, or appendages of, takings claims. An act that falls short of a taking may nonetheless substantially impair the functioning of a religious institution.

B. The City's Attempts To Focus This Court's Attention Away From The Religious Freedom Restoration Act Are Misdirected

Since the petition was filed, the lower courts have continued to construe the Religious Freedom Restoration Act, often considering rights conferred by that act in juxtaposition with rights secured by other constitutional provisions, statutes and decisional law.[2] This case

---

(fn. continued)
those in *Murdock* or the case at bench, threatening the continued existence of the religious institution in question, and sometimes simply denied them special privileges, such as the right to construct new facilities.

[2] Land use cases include *Western Presbyterian Church v. Board of Zoning Adjustment*, __ F. Supp. __ (D.D.C. 1994) (1994 WL 487861); *Germantown Seventh Day Adventist Church v. City of Philadelphia*, 1994 WL 470191 (E.D. Pa. 1994); and *Celestial Church of Christ v. City of Chicago*, 1994 WL 282304 (N.D. Ill.
(continued)

presents the interplay between the Act and the just compensation clause, a question of continuing public importance as to which this Court's eventual guidance appears inevitable, and presents it in a clear context, yoked with other certiorari-worthy issues.

The City claims that this Court should not consider the Religious Freedom Restoration Act issue because it was not pleaded below. (App. 18) This argument is surrealistic; as the City acknowledges, the Act was not passed until 1993, three years after this action commenced. "[P]rescience is not normally required of the practicing bar." *Whittier v. Aramian*, 264 Cal.App.2d 683, 685 (1968). The Act is by its express terms retroactive. 42 U.S.C. § 2000bb-3(a). Similarly, the City contends that Ramona Convent has not shown that the City has substantially burdened its exercise of religion. But a threat of forceable closure is manifestly a substantial burden. Further, the only burden the Act expressly assigns is placed upon the City: it must show a compelling state interest and that it has selected the least restrictive means of furtherance of that interest. 42 U.S.C. § 2000bb-1(b)(2).

(fn. continued)
1994). Representative of a much longer list of cases involving other fact situations are *Reily v. Reno*, __ F. Supp. __ (D. Ariz. 1994) (1994 WL 442826) (abortion clinics); *Attorney General v. Desilets*, 638 N.E.2d 233 (Mass. 1994) (landlord-tenant); *Hunt v. Hunt*, __ A.2d __ (Vt. 1994) (1994 WL 419775) (family law); *Fordham Univ. v. Brown*, __ F. Supp. __ (D.D.C. 1994) (1994 WL 369460) (freedom of speech); *Vernon v. City of Los Angeles*, 27 F.3d 1385 (9th Cir. 1994) (right of privacy); *Messina v. Mazzeo*, 854 F. Supp. 116 (E.D.N.Y. 1994) (inmate rights) and *In Re Faulkner*, 165 B.R. 664 (W.D. Mo. 1994) (bankruptcy).

II.

THE CALIFORNIA COURT RULING THAT RAMONA CONVENT RETAINS AN ECONOMICALLY BENEFICIAL OR PRODUCTIVE USE OF ITS PROPERTY IS UNSUPPORTED BY LAW OR EVIDENCE

A. The City Ignores Its Repeated Concession Below That Its Zone Is, In Its Own Words, A Public Facilities Zone, And It Has Thus By Definition Conscripted Private Property For An Avowedly Public Purpose Without Compensation

The City's failure to speak directly to a major issue raised below implicates truth in labeling: may the City call a zone which it repeatedly conceded to be a "public facilities zone" an open space zone to get the benefit of the different analysis that label requires? (See Pet. 5, 22-23.) Allowing the City to engage in such tactics sends a message to governments that unfair and misleading labeling will not be precluded, and will further diminish citizen respect for governmental institutions.

B. The City's Claim — That There Is A Categorical Rule Of Law That If A Zoning Imposition Allows Continuance Of An Existing Use On Property, It Is Immune From Constitutional Scrutiny — Does Not Express The Law Of This Court

While the City attempts to muddy the issue with distractive and somewhat misleading reportage, it does not

claim that it produced evidence at trial that any of its permitted or conditionally permitted uses left Ramona Convent any "economically beneficial or productive use" (*Lucas v. South Carolina Coastal Council*, 505 U.S. __, 112 S.Ct. 2886, 2901 (1992)) of either the 1.97 acre Property or the larger 19.17 acre school site.[3] Rather, it relies on a supposed (but nonexistent) categorical rule of law that a zoning ordinance that preserves an existing use can never violate the just compensation clause. (Opp. i Question 1) A zoning that freezes an existing use, like an ordinance that prevents a contemplated use, must meet the *Lucas* test, *i.e.*, preserve an economically beneficial use. *See, e.g., Fred F. French Invest. Co. v. City of New York*, 352 N.Y.S.2d 762, 767 (1973), *aff'd* 385 N.Y.S.2d 5 (1976).

This is not a "garden variety" regulatory case. (Opp. 10)

---

[3] The City's issue No. 2, as to whether taking and First Amendment claims may be adjudicated in summary judgment motions (Opp. i) and its extended treatise at support (Opp. 13-17) misses the point, which is not whether summary disposition may be granted in a fact-intensive case (as regulatory cases are; *see Penn Central Trans. Co. v. City of New York*, 438 U.S. 104, 124 (1978) (these cases present "essentially ad hoc factual inquiries," and whether compensation is due depends largely " 'upon the particular circumstances' ")), but whether such a resolution may be granted in the absence of supporting evidence. And it has been repeatedly recognized that land use regulation cases, being fact driven, are particularly poor candidates for summary disposition. *See, e.g., Barbaccia v. County of Santa Clara*, 451 F. Supp. 260, 266 (N.D. Cal. 1978); *M. J. Brock & Sons, Inc. v. City of Davis*, 401 F. Supp. 354 (N.D. Cal. 1975). The cases the City cites as to summary disposition of free exercise cases do not suggest the lack of supporting evidence or the lack of a plenary hearing to develop an evidentiary record, as happened here.

III.

THERE ARE NO PROCEDURAL REASONS WHY A GRANT OF CERTIORARI WOULD BE INAPPROPRIATE

A. This Case Is Ripe For Review

The City urges that the fourth question presented in the petition, whether a decision upholding the denial of an application for a land use change has res judicata or collateral estoppel effect on all future applications for other use changes on the same parcel, is unripe.[4]

A brief procedural history demonstrates that the position of both the City and the court below is that the resolution of the pending matter is a fait accompli.[5]

---

[4] The question is significant and recurring. The City's argument simply defies *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 352-53 and n.9, 10 (1986) which held that more than a single application may be needed to make clear how far a regulation goes. If the City were correct, res judicata would preclude all applications except the initial one from being considered on its merits. Ironically, the new question the City proposed (Opp. i Question 4, 21) is whether the case was ripe when it was before the court of appeal. Thus, the City's position is that the case decided below was unripe but the opinion it produced is preclusive, *i.e.*, Ramona Convent is both too early and too late, and it has done both too much (5 attempts to obtain zoning that will insure its survival, counting resisting the downzoning and the Wonder application) and too little.

[5] On July 6, 1994, a few days before the petition for certiorari was filed, the court of appeal issued an order (Appendix H to the petition) which (1) found res judicata and collateral estoppel, (2) suggested that the trial court vacate its order and enter an order with a contrary holding, and (3) set dates for reciprocal briefing if the trial court did not enter such order (which it did not). (App. H2-3) The briefing was completed, but rather than grant a peremptory writ

(continued)

This case is ripe for review.[6]

B. The Issues Raised In The Petition Are Properly Before This Court

As this Court noted in *Speiser v. Randall*, 357 U.S. 513, 520 (1958), procedure can determine outcome as much as substantive rules. Here City tactics and court procedures below precluded a fair hearing of Ramona Convent's constitutionally-based claims. (Pet. 8-10, 11-14)

At Opp. 25-26, the City represents that it presented the free exercise claim to the trial court (citing CT 292, the second page of its three-page motion for summary adjudication) to support its claim; see also Opp. 9, where the City states that the "parties" (emphasis added) presented evidence on this issue. These representations are false. Ramona Convent has reproduced as Appendix I hereto the City's motion, with the material at CT 292

(fn. continued)
to implement its decision, the court of appeal entered an alternative writ on August 17 (App. 1 to the opposition) which did no more than set dates for yet another round of briefing (the third: the City's initial petition triggered the first round) on exactly the same issues. This prolonged and circuitous procedure accomplishes no more than enable the City to argue a position here that is exactly opposite to what it urges below — which is that the denial of one application is res judicata for all future applications — and delaying resolution, to a result announced in the July 6 order, beyond the date set by this Court to resolve the petition.

[6] Should this Court accept the City's contention, and grant certiorari on the first three issues, Ramona Convent will — unless this Court indicates that such would be unnecessary or inappropriate — file a second petition raising Question 4 when proceedings below are concluded, to give this Court the option of hearing the integrated case.

indicated by quadruple asterisks at the beginning and end. It says nothing whatsoever about free exercise of religion.[7]

An inherent characteristic of the certiorari process, the absence of a certified record before the Court, sometimes tempts litigants to take liberties with recitals of proceedings and rulings in the lower courts. A careful reading of the appendices in this case will show that the procedural posture is as Ramona Convent represents.[8]

---

[7] Further, the points and authorities accompanying this motion offered neither declaration nor argument on the issue, and the trial court order and judgment (Pet. App. E, F) made no mention of the issue. And *Tan v. California Fed. Sav. & Loan Ass'n*, 140 Cal.App.3d 800, 811 (1983) (see Opp. 15), cited to suggest that the court of appeal decision cured prior lapses, does not rescue the City. The principle for which *Tan* is cited applies only to questions of law, as *Tan* itself makes clear (*id.* at 811). The problem here is factual and evidentiary.

[8] The City's position on this issue is **No. 6** of six examples it offers in a section headed "Ramona Mistates the Facts." (Opp. 7-9) The others have no more merit; most do not even center on facts. **No. 2** is a semantic quibble; the complaint does not contain the words "open space," but implicates the theory by pleading the Fourteenth Amendment, which guarantees equal protection of the laws. The City does not claim — nor could it — that the school site is not in fact spotzoned. **No. 3** chastises Ramona Convent for stating that uses permitted in the City open space policy are not consonant with the Cal. Gov't Code definition of open space. But they are not; see Pet. 5-6 n.2, and App. H. **No. 4** quotes Ramona Convent's argument that under the wording of the City ordinance, "private parks" are disallowed. But the ordinance (App. H) allows public, not private, recreational open space. As to **No. 5**, Ramona Convent did not say its lot split application was "deemed approved" at the referent cited; it said it was "supposedly thus deemed approved" under the express wording of both state and City law, a legal argument (which the court rejected in favor of a City claim of oral acquiescence by Ramona Convent). This leaves **No. 1** as the sole "fact" problem; here, City files may show that the City is

(continued)

C. The City's Efforts To Transport California Just Compensation Law Into The American Mainstream Are Unavailing

The City's response to the widespread scholarly criticism directed at California's persistence in charting a path of its own in land use law at variance with both the law of this Court and the law of sister jurisdictions, of which the material at Pet. 24-25 is a modest sampling, is to cite four cases (Opp. 12 n.3). Only one of these, *Twain Harte Associates, Ltd. v. County of Tuolumne*, 217 Cal.App.3d 71 (1990), is a land use case.[9] None made or affirmed a ruling requiring a public entity to pay compensation for excessive regulation (*in fact, no California opinion so requiring has been issued in the seven years since this Court corrected California's deviant practice in First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 311 (1987), in spite of the fact that California is the nation's

---

(fn. continued)
correct in its description of the contents of the ordinance passed, but Ramona Convent is also correct (it speaks to an incident that took place during a public hearing before formal passage).

The point is that none of this digressive material the City offers impacts in any significant way the legal issues presented; they are thus proverbial red herrings.

[9] *Twain Harte*, miscited as "Twaine Harte," was urged by Ramona Convent below but rejected by the court of appeal as inapropos. (App. B10-12) *Surfside Colony, Ltd. v. California Coastal Comm'n*, 226 Cal.App.3d 1260 (1991) and *Rohn v. City of Visalia*, 214 Cal.App.3d 1463 (1989) are excessive exaction cases. *Elysium Institute Inc. v. County of Los Angeles*, 232 Cal.App.3d 408 (1991) involved an attempt, for the most part successful, to regulate a nudist recreation center; the court expressly found that the County's acts created no taking. *Id.* at 435. The City's reasons for citing *Elysium* are obscure.

most populous, most litigious and perhaps most intensely regulated state). If this is the best the City's search of the California reports can yield, Ramona Convent's point is underscored.

CONCLUSION

In its draconian 1986 downzoning, the City effectively destroyed Ramona Convent's ability to survive and continue to offer quality education to (largely underprivileged) young women. Ramona's only asset, land, now cannot be sold to raise needed funds. Since that time, the City has cavalierly rejected all efforts at accommodation, and the state courts — in proceedings often lacking even the most rudimentary components of due process and fairness — have sustained it. The issues this case presents, involving the free exercise of religion as expressed in the First Amendment and the Religious Freedom Restoration Act, are of continuing (in fact accelerating) public importance. Certiorari is respectfully urged.

DATED: September 26, 1994.

Respectfully submitted,

GIDEON KANNER
Counsel of Record

M. REED HUNTER
CROSBY HEAFEY, ROACH & MAY

ROGER M. SULLIVAN
SULLIVAN, WORKMAN & DEE

Attorneys for Petitioner

APPENDIX I

Leland C. Dolley, City Attorney
City of Alhambra; and
BURKE, WILLIAMS & SORENSEN
624 South Grand Avenue, Suite 1100
Los Angeles, California 90017
(213) 236-0600
Attorneys for Defendant
CITY OF ALHAMBRA

FILED
JUN 10 1991
James H. Dempsey, Clerk
/s/ E. Lopez
By E. Lopez, Deputy

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RAMONA CONVENT OF THE
HOLY NAMES,
Plaintiff,
vs.
CITY OF ALHAMBRA, et al.,
Defendant.

CASE NO. C 755 518

NOTICE OF MOTION FOR ADJUDICATION OF ISSUES, MEMORANDUM OF POINTS AND AUTHORITIES, AND DECLARATION OF P. MICHAEL PAULES IN SUPPORT THEREOF

Date: July 12, 1991
Time: 2:30 p.m.
Place: Department 60
Discov. Cutoff: N/A
Motion Cutoff: N/A
Trial Date: October 29, 1991

TO PLAINTIFF RAMONA CONVENT, AND TO ITS ATTORNEYS OF RECORDS:

NOTICE IS HEREBY GIVEN that on July 12, 1991 at 2:30 p.m. or as soon thereafter as the matter may be heard, in Department 60 of this Court, located at 111 N. Hill Street, Los Angeles, California, defendant City of Alhambra will move for an order specifying that the issues designated below are without substantial controversy and shall be deemed established in favor of the moving party and against plaintiff.

* * * *

The motion will be made on the grounds that there is no material, triable facts regarding the material issues in plaintiff's third and fourth causes of action and they should be dismissed because:

1. Plaintiff's third cause of action for inverse condemnation is not ripe;

2. Neither the open space zoning ordinance of the City of Alhambra as applied to plaintiff's property nor the denial of plaintiff's subdivision effects a taking as neither denies plaintiff all use of its property;

3. The individual defendants named in plaintiff's complaint are immune from liability under 42 U.S.C. § 1983 under the doctrines of legislative and judicial immunity;

4. If, as a result of findings in favor of defendant upon any of the above issues, the third cause of action of plaintiff for inverse condemnation is dismissed, Plaintiff's fourth

cause of action for deprivation of civil rights under 42 U.S.C. § 1983 should also be dismissed.

Plaintiff made its general appearance in the above-entitled action by its complaint on March 16, 1990. The motion will be directed against Plaintiff with respect to the third and fourth causes of action in Plaintiff's complaint. This defendant is also involved in the first and second causes of action in Plaintiff's complaint, against which this motion will not be directed, those causes of action having already been decided by a denial of Petitioner's Application For Writ Of Mandate.

The motion will be based on this notice of motion, the attached declaration of P. Michael Paules, the attached statement * * * * of undisputed material facts, the attached memorandum of points and authorities, the papers, records, the file herein, and such evidence as may be presented at the hearing of the motion.

DATED: JUNE 7, 1991

LELAND C. DOOLEY
City Attorney
CITY OF ALHAMBRA; and
BURKE, WILLIAMS
& SORENSEN

By Robert V. Wadden
Robert V. Wadden, Jr.

Attorneys for Defendant
CITY OF ALHAMBRA